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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,681

03/16/2004

Hideo Ando

249726US2SDIV

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12/01/2005

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ALEXANDRIA, VA 22314

EXAMINER

NGUYEN, HUY THANH

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,681

Applicant(s)

ANDO ET AL.

Examiner

HUY T. NGUYEN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 September 2005 has been entered.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 20-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,564,007.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims 16-19 of the present application and claims 1-5 of U.S. Patent No. 6,564,007 is that claims 1-5 of U.S. Patent No.

6,564,007 additionally recite a user-defined program chain that is not found in claims 20-24 of the present application. However, it is noted that eliminating a part is

obvious to one of ordinary skill in the art. See Elimination of an element and its function---*In re Karlson*, 153 USPQ 184 (CCPA 1963). Therefore, it would have been

obvious to one of ordinary skill in the art to modify claims 1-5 of U.S. Patent No.

6,564,007 by eliminating the user defined program chain being recited in claims 1-5 of U.S. Patent No. 6,564,007 to produce claim 20-24 of the present application.

4. Claims 20-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,560,406.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims 20-24 of the present application and claims 1-4 of U.S. Patent No. 6,560,406 is that claims 1-4 of U.S. Patent No.

6,560,406 additionally recite the entry of audio information that is not found in claims 20-24 of the present application. However, it is noted that eliminating a part is

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obvious to one of ordinary skill in the art . Therefore, it would have been obvious to one of ordinary skill in the art to modify claims 1-4 of U.S. Patent No. 6,560,406 by eliminating the entry of audio information chain being recited in claims 1-4 of U.S. Patent No. 6,560,406 to produce claim 20-24 of the present application .

Claims 20-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,724,980.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims 20-24 of the present application and claims 1-4 of U.S. Patent No. 6,560,406 is that claims 1-4 of U.S. Patent No. 6,724,980 additionally recite cell type information that is not found in claims 20-24 of the present application . However, it is noted that eliminating a part is obvious to one of ordinary skill in the art . Therefore, it would have been obvious to one of ordinary skill in the art to modify claims 1-4 of U.S. Patent No. 6,724,980 by eliminating the entry of audio information chain being recited in claims 1-4 of U.S. Patent No. 6,724,980 to produce claim 20-24 of the present application .

5. Claims 20-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-24 of copending Application No. 10/800,755. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims

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20-24 of the present application and claims 20-24 of copending Application No.

10/800,755 is that claims 20-24 of copending Application No. 10/800,755 additionally recite user define program chain information and second cell information that is not found in claims 20-24 of the present application . However, it is noted that eliminating a part is obvious to one of ordinary skill in the art . Therefore, it would have been obvious to one of ordinary skill in the art to modify claims 20-24 copending Application No. 10/800,755 by eliminating the entry of audio information chain being recited in claims 20-24 of obviousness-type double patenting as being unpatentable over claims 20-24 of copending Application No. 10/800,755 to produce claim 20-24 of the present application .

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUY T. NGUYEN whose telephone number is (571) 272-7378. The examiner can normally be reached on 8:30AM -6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on (571) 272-7950. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H.N


HUY NGUYEN
PRIMARY EXAMINER